

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CATHERINE MCKOY, MARKUS FRAZIER, and  
LYNN CHADWICK, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

THE TRUMP CORPORATION, DONALD J. TRUMP,  
in his personal capacity, DONALD TRUMP, JR., ERIC  
TRUMP, and IVANKA TRUMP,

Defendants.

No. 1:18-cv-09936-LGS-SLC

**DECLARATION OF MATTHEW D. BRINCKERHOFF IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

MATTHEW D. BRINCKERHOFF, declares under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Matthew D. Brinckerhoff. I am a partner in the firm of Emery Celli Brinckerhoff Abady Ward & Maazel LLP, counsel for Plaintiffs Catherine McKoy, Markus Frazier, and Lynn Chadwick ("Plaintiffs"). I submit this declaration in support of Plaintiffs' Motion for Class Certification.

2. Annexed as **Exhibit 1** is a true and accurate copy of excerpts from the transcript of the August 18, 2022 deposition of David Merriman, who testified on behalf of non-party ACN Opportunity, LLC ("ACN") as its designee pursuant to Fed. R. Civ. P. 30(b)(6).

3. Annexed as **Exhibit 2** is a true and accurate copy of a spreadsheet documenting ACN Independent Business Owner ("IBO") sign-ups from 2012 to 2016.

4. Annexed as **Exhibit 3** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Michael Gartenberg.

5. Annexed as **Exhibit 4** [reserved].
6. Annexed as **Exhibit 5** is a true and accurate copy of a February 6, 2006 Trump Organization memorandum from Cathy Glosser enclosing the February 6, 2006 Endorsement Agreement between Donald Trump and ACN.
7. Annexed as **Exhibit 6** is a true and accurate copy of a February 15, 2006 email from Robert Stevanovski at ACN.
8. Annexed as **Exhibit 7** is a true and accurate copy of the February 2008 Endorsement Agreement between Donald Trump and ACN.
9. Annexed as **Exhibit 8** is a true and accurate copy of the January 28, 2009 Appearance and Endorsement Agreement between Donald Trump and ACN.
10. Annexed as **Exhibit 9** is a true and accurate copy of the January 14, 2011 Appearance and Endorsement Agreement between Donald Trump and ACN.
11. Annexed as **Exhibit 10** is a true and accurate copy of the February 13, 2013 Appearance Agreement between Donald Trump and ACN.
12. Annexed as **Exhibit 11** is a true and accurate copy of an October 30, 2015 email from Rhona Graff at The Trump Organization attaching the Mutual Termination of Appearance Agreement executed by Donald Trump and ACN on June 20, 2015.
13. Annexed as **Exhibit 12** is a true and accurate copy of a November 17, 2008 email from Sheila Marcello at ACN attaching an ACN document titled, “24 HOUR GAME PLAN.”
14. Annexed as **Exhibit 13** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Stacie Bosley.

15. Annexed as **Exhibit 14** is a true and accurate copy of a December 11, 2012 email from Sheila Marcello at ACN and accompanying attachments, including ACN documents titled: “Road Map to LEXUS,” “IBO Getting Started Process,” and “Presenting the Opportunity.”

16. Annexed as **Exhibit 15** is a true and accurate copy of ACN Opportunity Disc, Version 4.0, June 2010.

17. Annexed as **Exhibit 16** is a true and accurate copy of excerpts of the August 2011 issue of *Success from Home* magazine.

18. Annexed as **Exhibit 17** is a true and accurate copy of ACN Opportunity Disc Version 5.3, December 2011.

19. Annexed as **Exhibit 18** is a true and accurate copy of ACN Opportunity Disc Version 5.5, May 2012.

20. Annexed as **Exhibit 19** is a true and accurate copy of ACN Opportunity Disc Version 5.6, June 2012.

21. Annexed as **Exhibit 20** is a true and accurate copy of ACN Opportunity Disc Version 6.1, September 2012.

22. Annexed as **Exhibit 21** is a true and accurate copy of ACN Opportunity Disc Version 7.0, January 2013.

23. Annexed as **Exhibit 22** is a true and accurate copy of ACN Opportunity Disc Version 9.2, June 2015.

24. Annexed as **Exhibit 23** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Kevin Lane Keller.

25. Annexed as **Exhibit 24** is a true and accurate copy of an ACN promotional video featuring Donald Trump.


26. Annexed as **Exhibit 25** is [reserved].
27. Annexed as **Exhibit 26** is a true and accurate copy of an ACN promotional video featuring Donald Trump.
28. Annexed as **Exhibit 27** is a true and accurate copy of excerpts from the transcript of the October 11, 2022 deposition of Donald J. Trump.
29. Annexed as **Exhibit 28** is a true and accurate copy of ACN's 2012 Policies and Procedures.
30. Annexed as **Exhibit 29** is a true and accurate copy of an October 25, 2006 email from Robert Stevanovski at ACN.
31. Annexed as **Exhibit 30** is a true and accurate copy of excerpts of the September 2014 issue of *Success from Home* magazine.
32. Annexed as **Exhibit 31** is a true and accurate copy of excerpts of the August/September 2008 issue of *Success* magazine.
33. Annexed as **Exhibit 32** is a true and accurate copy of excerpts of the August 2010 issue of *Success from Home* magazine.
34. Annexed as **Exhibit 33** is a true and accurate copy of an internal ACN financial analysis titled "ACN Consolidated Summary."
35. Annexed as **Exhibit 34** is a true and accurate copy of a March 26, 2010 letter from Brian L. Davis of McColl Partners to ACN Chairman Robert Stevanovski enclosing a document titled "Confidential Information Memorandum," and excerpts of the same memorandum.
36. Annexed as **Exhibit 35** is a true and accurate copy of excerpts from the transcript of the August 23, 2022 deposition of Anne Archer Butcher.

37. Annexed as **Exhibit 36** is a true and accurate copy of the March 2009 episode of *The Celebrity Apprentice* featuring ACN.

38. Annexed as **Exhibit 37** is a true and accurate copy of the March 2011 episode of *The Celebrity Apprentice* featuring ACN

39. Documents produced by non-party ACN in this case include lengthy spreadsheets listing thousands of ACN Independent Business Owners (“IBOs”) at particular points in time and their ACN earnings, if any. One such spreadsheet is over 700 pages long and lists 65,535 IBOs and “raw data” detailing their earnings, if any. Given the length of the spreadsheet, it is not attached as an exhibit here. Plaintiffs can supplement the record and provide a copy of the complete spreadsheet containing the raw IBO enrollment data to the Court, if needed.

Dated: March 10, 2023

  
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MATTHEW D. BRINCKERHOFF

# EXHIBIT 33

## ACN Consolidated Summary February 2006 Actual vs. Plan

### North America

#### P&L Results

- Total Revenue of \$18,144K was better the Plan by \$2,072K. This was driven substantially by \$2,975K favorable variance from Distributor revenue. Product revenue of \$12,828K was \$345K below the Plan, with LD and Local being major contributors. LD was \$335K less than plan and Local was \$269K less than Plan, both driven by lower than expected customer counts and seasonality. Local counts were 7,705 under plan and LD was 4,584 under plan. These declines were partially offset by VOIP being above plan by \$261K and 3,116 in customer counts. In addition, other revenues contributed \$563K to the shortfall due to the shortfall in convention-related revenues.
- Actual customer orders for the month were 21,038 compared to the Plan of 26,515. Rep production for the month was 8,939 compared to a forecast of 2,500.
- The overall gross margin of \$5,612K was \$1,052K or 16% less than the Plan. Product gross margin of \$5,875K was under plan by \$404K, due to lower LD volume (\$210k), lower bundled volume of (\$87K), and higher Voip sales (\$104K). In addition distributor margin missed budget by \$304K due to the new comp plan changes and special bonuses. Gross margin on all other revenue missed budget by \$347K due to lower Ft. Worth convention attendance.
- At \$4,365K, SG&A was better than the Plan by \$220K or 5% and bad debt expense at \$451K was also \$70K or 13% better than the Plan.
- EBITDA, at \$796K, is \$763K or 49% below the Plan. This was driven by the gross margin performance, offset by the SG&A and bad debt favorable results.

#### Significant Events

- A contract was signed with Donald Trump for both speaking engagements and promotional videos. The agreement provides for a payment of \$1Million of which \$500K is reflected in cost of revenue in North America's February results. The remaining \$500K in Europe is expected in April.
- The success in recruiting was driven primarily by three items. These items were the comp plan changes combined with the \$1,000 ETT bonus for February, the Success at Home publication and the Donald Trump announcement. The lower than expected distributor margin was driven by the ETT bonus which was accrued at approximately \$500K. If qualifications exceed the current estimate of 10% for that bonus, added accruals will be required.
- During March, the company secured approximately \$735K of lease financing- \$185K for the new Avaya switch in Montreal from Avaya Financial Services and a \$550K facility from First American Equipment Finance that will cover the furniture and IT expenditures for the build-out of the new NC facility, as well as approximately \$140K of IT equipment and software in FH.
- Negotiations are in process with Rogers to obtain Canadian LD cost reductions that should maintain the gross margin at the current run rate, after the Roger's credits which are set to expire in April. This will be favorable to budget since the budget anticipated the credits expiring in April with no further cost reductions.
- The US Bank credit committee has approved in principle an asset based loan for Canada that is expected to raise approximately \$2.5 million. The loan is expected to close in late April if all documentation requirements can be successfully completed.

### Europe (In Euros)

**P&L Results**

- Revenue of 15,303K euros was below the Plan by 1,110K euros. The main shortfall is in Fixed revenues which (including subscriptions) are down approximately 1,365K euros from the Plan. Fixed revenue continues to be a concern and the February results are being evaluated by Product Management. Mobile revenues, however, were favorable by 147K euros or 10% and Distributor revenue was 97K euros or 12% above the Plan.
- Rep production for the month was 1,571 compared to a forecast of 1,820.
- The gross margin of 5,535K euros was 314K or 5% below the Plan. Fixed margins, while below the Plan, are slightly better than the Plan on a percentage basis (41% vs. a Plan of 39.0%), but Mobile, at 33.0%, is a less than the 34.6% in the Plan.
- SG&A of 4,860K euros was 485K or 9% below the anticipated 5,345K in the Plan. Bad debt of 270K euros is better than the Plan by 26K. Expenses are lower due to timing impacts and to lower headcounts than planned as result of activity in anticipation of the restructuring plan.
- Total EBITDA for Europe at 405K euros was above the Plan by 197K

**Significant Events**

- The European Restructuring Plan was approved in Amal and Amsterdam by the works council and unions.
- The ABN Ambro bank agreement is expected to be executed in March with a mid April transfer of cash of approximately \$2,800,000.

**Australia (Australian Dollars)****P&L Results**

- Revenue of A\$2,804K was below the Plan by A\$566K or 17% due to lower than expected customer counts which are 4,335 below the Plan and a prior period true up of A\$103. Distributor revenue is below the Plan by A\$223K due to lower than budgeted rep renewals caused by reps renewing early in January, partly offset by a better than expected rep sign-on rate.
- Gross Margin of A\$593K or 21% is below the Plan by A\$593K. Distributor margin was below plan by A\$242 due to reps renewing in January rather than as budgeted in February. Fixed line product margin missed plan by A\$295 due to a prior period adjustment (A\$103K), lower gross margin % (A\$100K), and lower customer counts (A\$100K)
- EBITDA of A\$(816K), was unfavorable to the Plan by A\$330K. A favorable SG&A result of A\$179K helped offset the unfavorable performance. However, bad debt of A\$135K was unfavorable to the Plan by A\$18K. SG&A included about A\$67K for New Zealand compared to a budget of A\$103K which contributed to the favorable expense performance.

**Significant Events**

- Fixed gross margin % run rate is currently at 22% vs. a plan of 27%. This is due to a wholesale line rental increase by Telstra of A\$3.00 per line, a shift in call mix away from higher margin fixed to mobile calls, offset by wholesale business discounts. An evaluation of the fixed line gross margin will be completed in the next 30 days.
- The New Zealand rep launch is occurring in March. The first launch event was attended by over 1,500 prospective reps.
- Active Reps increased by 417 to 10,852 at the end of February and to 10,269 in the Plan. The rep count in March will drop by approximately 5,000 due to non renewals.
- Active Local customers are 36,145 at the end of February compared to 35,564 at the end of January and to the 40,480 in the Plan.



